

**BEFORE THE
FEDERAL COMMUNICATIONS Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
To Allocate Spectrum Below 3 GHz for Mobile)	
And Fixed Services to Support the Introduction of)	
New Advanced Wireless Services, including Third)	
Generation Wireless Systems)	
)	

COMMENTS OF C&W ENTERPRISES, INC.

C&W Enterprises, Inc. ("C&W"), hereby submits its comments to the *Eighth Report and Order and Fifth Notice of Proposed Rulemaking and Order* ("Order") in the above-referenced proceeding. Petitioner is licensee of Broadband Radio Service ("BRS") spectrum (including station WML478, the BRS 1 channel) and lessee of Educational Broadband Service ("EBS") licenses, both of which it is using in which to operate a video system and provide data services in San Angelo, Texas. C&W has provided data services to the San Angelo market since October, 2002 and currently services approximately 1500 customers, which is expected to grow by 350 subscribers annually.¹

I. Any New or Expanded Operations on any BRS 1 and 2 Channel Should be Deemed Primary Operations Until Negotiations with the AWS Entrant Commence

The Commission should not mandate a cut-off date of November 25, 2005, after which all expanded or newly initiated operations on the BRS-1 or 2 channels will be treated as secondary, but instead should extend the period

¹ C&W is also providing video services on the remaining BRS and EBS channels in the San Angelo, TX market.

for eligible operations to the date that the AWS entrant provides written notice to the BRS licensee that it desires to commence transition negotiations. The BRS licensee should not be penalized and required to allow its spectrum to lay fallow or underutilized because the Commission has deemed that it must migrate its services to another band to allow for AWS users to occupy its current bandwidth. It could be years before an AWS entrant deploys service on such spectrum, leaving the BRS licensee in limbo until such action is taken. This leaves the BRS licensee with the decision as whether to implement service at all, when to do so will incur future relocation costs that most entities would not be able to pay as part of their ongoing business expenses.

Any expansion or commencement of services should continue to be regarded as primary operations subject to reimbursement until the AWS entrant begins the process to initiate its own services on the 2.1 GHz spectrum. C&W is currently adding approximately thirty customers a month. Such success should not be overshadowed by the concern over impending costs to relocate its customers due to a change in Commission regulations. In fact, to allow such operations to remain primary until this juncture would encourage the AWS entrant to commence this process at a far earlier, rather than later, date, expediting such a transition and meanwhile allowing services that are planned or which have already been deployed on the BRS 1 and 2 channels to continue to develop.

Using the November 25th date as the cut-off, and therefore the standard for comparable facilities, could not possibly begin to set a fair standard for reimbursing the BRS licensee once a transition is implemented. As the last few years have proven, the equipment and standards for services provided on BRS spectrum have changed dramatically and are likely to

continue to keep evolving at a rapid pace considering the new rules put in place for this spectrum. The only adequate standard for comparable facilities should be to relocate the operations in place at the time of the transition process. This being said, it is unlikely with the upcoming transition of the 2.5 GHz spectrum and the uncertainty surrounding the relocation of the BRS 1 and 2 channels, that new services will be implemented on a wide range basis on these channels. The entities who will truly benefit from resetting the cut-off date will be those businesses that are already operating on the BRS 1 and 2 channels and who would have received compensation regardless.

II. Transition Schedule for BRS Licensees

The Commission should require that AWS licensees relocate any and all existing BRS operations throughout a BRS station's geographical service area ("GSA") regardless as to whether the AWS licensee will serve such areas, just as the Commission has mandated in other services.² Furthermore, while the transition will have to be done on household by household basis, it must be done throughout the GSA within the same short timeframe, as C&W's operations include use of an omnidirectional antenna that would receive interference from any AWS operations implemented in its GSA prior to complete transition of C&W's customers.

The transition of the channels should occur in accordance with what is best for the incumbent BRS operations, not in coordination with the deployment of AWS services or its build-out requirements. Thus, any transition would have to occur post-transition of the BRS and EBS channels,

² See AWS Sixth R&O, 19 FCC Rcd at 20753, ¶ 71 (requiring AWS licensees in the 1995-2000 MHz and 2020-2025 MHz bands to relocate incumbent BAS operations in all affected BAS markets, including those markets where the AWS licensee provides partial, minimal, or no service).

but in a significant time-frame prior to the build-out requirements for BRS licensees to allow full compliance with such requirements.

III. AWS Entrants Must Provide Comparable Facilities to Existing Operations

C&W is operating a unique system that consists of a supercell operation, serving its entire 35 mile GSA and having all Customer Premises Equipment, even those receivers located at the border of its GSA over thirty-five miles away, transmit back to a central tower site. Its data services are being delivered by using the G4 channel for downstream transmissions and the BRS-1 channel for upstream transmissions.

C&W fully recognizes that this transition is going to incur great expense for the AWS entrant as part of the price for paying to acquire this spectrum. However, that is the price for acquiring spectrum encumbered with an operating system. A transition of the customers on C&W's system would require the construction of a second (2.5 GHz) plant that would allow for transition of the customers as their equipment is switched out for new equipment that could be used on the 2.5 GHz band. The costs to reimburse C&W to transition its data customers in order to eliminate its use on the 2.1 GHz band would include at the bare minimum the construction of such a second system; technicians to visit each customer and replace their equipment; the user equipment for each subscriber; the time expended by company employees to inform customers and arrange such appointments; and the time of company personnel in planning and organizing such a transition. C&W estimates that the transceivers alone will cost approximately \$250 each and that such replacements will cost up to \$600 per customer. Furthermore, as the 2.5 GHz spectrum band does not allow the wireless signal to travel as

far as the 2.1 GHz band, it is likely that C&W will have to locate and lease additional tower sites and set up a cellular system to reach those customers currently being served on the perimeter of its GSA. C&W would expect all of this expense to be reimbursed by the AWS entrant as part of its obligation to provide comparable facilities, since the transition would all be incurred strictly to allow the AWS entrant access to the 2.1 GHz spectrum.

Regardless, such costs do not even begin to reflect the time, effort and expense that will have to be generated on the part of C&W in order to maintain its customers base during this transition period, nor the undeniable outcome that some customers will be lost as part of this process.

Furthermore, putting its efforts into relocating the spectrum also takes away energy that could be spent attracting future customers and expanding its business. Thus, there is no way to completely make the incumbent user of such spectrum whole, as many of these items would be difficult to characterize in specific dollar amounts.

The BRS licensee must therefore rely on the specific items detailed above to get it as close to being made whole as possible. Anything less would merely penalize such entities as C&W for constructing successful systems and which could endanger C&W's ability to continue operating. Making this clear to AWS entrants from the outset is particularly important to avoid such AWS entrant from refusing to pay mandatory costs necessary to maintain such operations.

IV. The Commission Should Apply the Right of Return Policy to BRS Negotiations

As a safeguard to BRS Licensees, the Commission should apply a “right of return” policy to these relocation negotiations, though rather than

allowing the BRS Licensee to return to its former bandwidth as a first option (a move that could be the end of a family business such as C&W that must transition to such spectrum one household at a time), it should only use such a remedy once it is apparent that upgrading the new system will not cure the deficiencies inherent from the transition. The Commission should require the AWS entrant to provide any upgrades or changes to the BRS Licensee's facilities necessary to ensure the same operations experienced prior to relocating to 2.5 GHz spectrum. Furthermore, the AWS entrant should be expected to pay for any loss of revenue due to a reduction in the subscriber base that results from such inadequate operations. This should motivate the AWS entrant to negotiate for and provide adequate facilities during the first step of the relocation process, so as to avoid having to pay additional funds to upgrade the BRS licensee's system and reimburse for revenue losses at a later date.

V. The Commission Should Set a 10 Year Sunset Rule

The Commission should not impose a sunset rule that would alleviate AWS entrants from such reimbursement expenses after a certain deadline. If the AWS entrant is forcing the BRS licensee to relocate to new spectrum to allow for its own operations, then it should be obligated to pay for such a transition regardless of when the transition occurs. No matter when such relocation occurs, it will always be the entity operating on such BRS channels that will be affected the most. Incorporating a sunset date only benefits the AWS entrant, whose bargaining power increases while the value of the BRS 1 and 2 licenses decline as such a deadline approaches. The AWS entrant should not be provided with such an entitlement.

CONCLUSION

The Commission has determined that BRS 1 and 2 licensees must transition to the 2.5 GHz spectrum because it believes that adding the 2.1 GHz spectrum currently being used by such channels to neighboring spectrum will attract new service users. Since the ability to obtain a large block of spectrum for new services is already in place to attract such new service participants, it seems odd that the Commission is trying so hard to create further incentives for the AWS entrant, rather than to entice the BRS licensee to want to make this transition. Many of its suggestions are only to the benefit of the AWS licensee and if implemented, will actually serve to penalize the current operator on the BRS 1 and 2 channels for having initiated service under the former Broadband Communications Service rules. For this reason, the Commission needs to re-evaluate its objectives in this proceeding.

As a small family run business that worked hard for 12 years to develop its business, C&W takes particular offense at providing such incentives to the AWS entrant, particularly when they are at the detriment of the BRS licensee. After following all of the rules put forth by the Commission and spending both time and great expense to develop a successful system, the Commission seems to be disregarding its efforts in favor of a new entrant into the marketplace. Such a bias is neither right nor fair. This has been of great concern to C&W, which came to Washington to meet with staff from both the Wireless Telecommunications Bureau and later, incurred the expense to return to Washington and hold a second meeting with the Office of Engineering and Technology to discuss this very matter. C&W is willing to follow the Commission's rules and move forward with transitioning the

spectrum if required to do so, but not at a cost of losing its business, which is sure to happen if adequate reimbursement is not made.

C&W requests that the Commission consider its comments when enacting its rules in this proceeding and thanks it for its consideration in this important matter.

Respectfully submitted,

C&W Enterprises, Inc.

By /s/ John W. Jones, Jr.
John W. Jones, Jr.
CEO / President

November 25, 2005